No. H265.H20

THE TRUSTEES OF THE
PUBLIC LIBRARY
OMNIVM
LVX
CIVIVM
OF THE CITY OF
BOSTON
1852 1878

STATE OF MAINE.

Jan. 2, 1839.

To the Senate and House of Representatives:

In compliance with the request of the Governor of the State of Georgia, I herewith lay before you a copy of a report and sundry resolutions adopted by the Legislature of that State in relation to a demand made upon the Executive of this State, for the delivery of Daniel Philbrook and Edward Kelleran, as fugitives from justice. In order to put you in possession of all the proceedings and facts in this case, I also transmit to you copies of all the documents on file in the Executive Department, having reference to this subject. The views of the Executives of the two States appear in their several communications, and I have nothing to add, except the expression of a conviction, that events which have transpired in other States, since the date of this correspondence, seem to me to sustain the correctness of my construction of the Constitution.

EDWARD KENT.

Council Chamber,
January 2nd, 1839.

PUBLIC LIBRARY
OF THE
CITY OF BOSTON

From 75.85.54
782.068
Aug. 26, 1880.

No. 1.

EXECUTIVE DEPARTMENT, GEORGIA,
Milledgeville, 21st June, 1837.

SIR:—I herewith transmit to your Excellency, a copy of an affidavit of James Sagurs, taken before a lawful officer of this State, and other proceedings had thereon, charging Daniel Philbrook, late master of the Schooner or Brig Susan, and Edward Kelleran, mate of said vessel, (fugitives from justice in this State) with the offence of feloniously inveigling, stealing, and carrying away, a negro man slave, named Atticus, the property of said James Sagurs and Henry Sagurs. Which copy I have caused to be carefully compared with the original, and certified accordingly. I have, also, in pursuance of the provisions of the act of Congress, passed 12th February, 1793, "respecting fugitives from justice," &c. appointed an agent on the part of this State, to receive and convey the fugitives to the County of Chatham, in this State, to be tried for the offence with which they stand charged.

Your Excellency will, therefore, be pleased to consider this my demand, under said statute, for the said Daniel Philbrook and Edward Kelleran, and to order their arrest, if to be found in the State over which you preside, and cause them to be delivered to Mordecai Sheftall, Jun., the authorized agent of this State for the above purpose.

I have the honor to be,
Your Excellency's ob't serv't,
WILLIAM SCHLEY.

His Excellency the Governor of Maine.

No. 2.

GEORGIA, CHATHAM COUNTY.

Personally appeared, before me, Joseph Felt, a Magistrate duly appointed in and for the County aforesaid, James Sagurs, who being duly sworn, deposeth and saith, that one Daniel Philbrook, late master of the Schooner Susan, of Boston, as deponent believes, and one Kelleran, late mate of said vessel, as deponent also believes, did, on or about the fourth day of May last, feloniously inveigle, steal, take, and carry away, without the limits of the State of Georgia, a negro man slave, named Atticus, the property of this deponent and his brother, Henry Sagurs; and further he saith, that the Daniel Philbrook and Kelleran have been guilty, as deponent is informed and believes, of a felony under the laws of this State, and therefore prays a warrant may

issue against the said Daniel Philbrook and Kelleran, that they may be dealt with according to law; and this deponent further saith, that since the commission of said felony the said Daniel Philbrook and Kelleran have fled from this State, and are, as he believes, at this time within the limits of the State of Maine, in the United States.

JAMES SAGURS.

Sworn to before me, this 16th June, 1837.

JOSEPH FELT, *J. P.*

GEORGIA, CHATHAM COUNTY.

To any lawful Constable of said County:

From the information contained in the above affidavit, you are hereby authorized and commanded to arrest the bodies of the said Daniel Philbrook and Kelleran, if to be found in this County, and bring them before a Magistrate of said County, that they may be dealt with as the law directs.

Given under my hand and seal, this 16th June, 1837.

[SEAL.] JOSEPH FELT, *J. P.*

EXECUTIVE DEPARTMENT, GEORGIA,
Milledgeville, 21st June, 1837.

I certify that the within and foregoing is a true extract and copy of the orignal on file in this Department.

JOHN R. ANDERSON, Sec'y Ex. Dep't.

The State, *vs.* Daniel Philbrook, late the Captain of the schooner Susan, and Edward Kelleran, late the Mate of the said schooner Susan—inveigling, stealing, and carrying away a slave. The defendants, David Philbrook and Kelleran, are not to be found in this County.

M. SHEFTALL, Jr. C. C. C.

Savannah, 16th June, 1837.

NO. 3.

STATE OF MAINE.

EXECUTIVE DEPARTMENT,
AUGUSTA, AUGUST 16, 1837.

His Excellency WILLIAM SCHLEY,
Governor of the State of Georgia:

SIR:—I have had the honor to receive your Excellency's communication, enclosing the affidavit of James Sagurs, and demanding the arrest of Daniel Philbrook and Edward Kelleran, accused of

having feloniously inveigled, stolen and carried away, without the limits of the State of Georgia, a negro slave.

Whatever may have been urged relative to this, or any kindred subject by individuals or self constituted societies, the offence indicated in the affidavit being made penal by the laws of Georgia, would in my view require Executive interference, as really and as readily, as offences of any other character.

I am, however dissuaded from complying with your Excellency's request, not from any sympathies with those who would wantonly violate the laws of a Sister State, but from considerations which I beg leave now to present.

So far as I have received any information relative to Philbrook and Kelleran, their visit to your State was in the course of their ordinary business, as mariners. Their vessel being at the South, they navigated it homeward by the usual route and in the usual time.

They had stated homes, to which they openly returned—at those homes they took up their residence, and conducted their affairs there without concealment, and in all respects conformably to the usages of innocent and unsuspecting citizens. Whether such a course of conduct is to be deemed a fleeing from justice, within the meaning of the Act of Congress, and whether men so conducting are to be viewed as "fugitives," may present a question of some importance, but which it does not now seem necessary for me to decide.

The affidavit suggests two causes for the proposed arrest. One is, that the supposed fugitives have been guilty, *as the deponent has been informed and believes*, of a felony under the laws of your State. Felony is a generic term, embracing sundry descriptions of crime. In what acts the supposed felony consisted, whether they were acts aimed at the subversion of the Government, or affecting the life, liberty or property, of individual citizens, and when, where, or by what instrumentality committed, is not intimated.

The Deponent (as he asserts) may have been informed that some act which he had heard and believes the said Philbrook and Kelleran performed, was denominated a felony. From whom and with what accuracy he learned the definition of a "felony," is unknown. Had he stated the act committed, the conclusion which I could have drawn from it relative to its character and criminality, would be more satisfactory to me, than the deponent's opinion that such an act, (whatever it might be,) constituted a felony. Surely a charge so vague, even when verified by oath, cannot justify the desired arrest. But this charge, indefinite as it is, is not sworn to as true. The allegation is merely, that the deponent has been so informed, and so believes.

The other allegation is, that the said Philbrook and Kelleran,

as deponent believes, did feloniously inveigle, steal, take and carry away, without the limits of the State of Georgia, a negro slave. Doubtless such an act, if committed, is an offence against the laws of Georgia. But the allegations of the affidavits, do not, in my judgment, constitute such a charge as would justify me in surrendering the supposed fugitives.

All rests in the deponent's belief; no positive statement is made, and on what evidence his belief is founded, does not appear. It might be the slightest suggestion of an excited mind—it might draw its origin from some indeterminate insinuation of interested persons, whose motives we cannot scrutinize. Above all, it is not alleged that the crime has been committed by any one, but merely that the deponent believes it has. By the Constitution of the United States, no warrant is to issue, except on probable cause, supported by oath or affirmation, and the Constitution of this State furnishes the same protection to its citizens. In the case under consideration, it is not asserted that there is probable cause, nor are facts or circumstances presented, from which probable cause can be inferred.

In a case arising in this State, no magistrate would feel justified to issue his warrant upon such evidence. It would not be sufficient authority to detain a man for trial. From the foregoing considerations, I am constrained to think, that the case which your Excellency has presented, is not of such a character as will permit me to order the proposed arrest.

I have the honor to be,

With high considerations,

Your Excellency's ob't serv't,

ROBERT P. DUNLAP.

NO. 4.

EXECUTIVE DEPARTMENT GEORGIA,
MILLEDGEVILLE, 7th SEPTEMBER, 1837.

SIR:—I have the honor to acknowledge the receipt of your communication of the 16th ultimo, in answer to mine of the 21st of June last, demanding of your Excellency the persons of Daniel Philbrook and Edward Kelleran, fugitives from justice, and charged with the crime of feloniously inveigling, taking and carrying away without the limits of the State of Georgia, a certain negro man Slave, named Atticus, the property of James Sagurs and Henry Sagurs.

You refuse to comply with the demand on three grounds, if I rightly understand you. Firstly, because the persons charged, "visited Georgia in the course of their ordinary business as mariners, returned homeward by the usual route and in the usual

time—had stated homes to which they openly returned—took up their residence and conducted their affairs there without concealment, and in all respects conformable to the usages of innocent and unsuspecting citizens." Secondly, "because the affidavit on which the demand was made is not positive, but only asserts the deponent's information and belief that the persons charged had committed a felony, by inveigling, stealing, taking and carrying away without the limits of the State of Georgia a negro Slave." And thirdly, because, "felony is a generic term embracing many discriptions of crime, and had the deponent stated the act committed, the conclusion you could have drawn from it relative to its character and criminality would have been more satisfactory to you than the deponent's opinion that such an act constituted a felony."

The fact that the individuals charged, "returned to their homes (in Maine,) and conducted their affairs *there* without concealment and in all respects conformable to the usages of innocent and unoffending citizens," is no evidence of their innocence. If they had thus acted *within* the jurisdiction of the State where the offence is alleged to have been committed, I admit it would have been a circumstance well calculated to rebut the *presumption* of guilt. But they were in the *State of Maine*, beyond and without the jurisdiction of the laws they had violated, where they expected to be protected, and where, I regret to say, the course your Excellency has deemed it your duty to pursue, they will in fact be protected, and that too, directly in opposition to a positive law of the United States passed in pursuance of the Constitution.

With due deference to your Excellency's judgment, I must be permitted to differ from you in the construction of Mr. Sagurs" affidavit. He does not state the fact of *stealing* upon his belief, but the fact of the individuals charged, *being the Master and Mate of the Schooner, Boston.* The affidavit states positively that "Daniel Philbrook and Edward Kelleran did on or about the 4th day of May last, feloniously inveigle, steal, take and carry away without the limits of Georgia, a negro man Slave named Atticus the property of the deponent and his brother Henry Sagurs." The deponent then states that this act, *as he has been informed, and believes*, is a felony under the laws of Georgia.

The fact, therefore, which you desire to know in order to draw your own conclusions relative to the character and criminality of the offence, has been distinctly and positively sworn to in the affidavit to wit: that Daniel Philbrook and Edward Kelleran did feloniously inveigle, steal, take and carry away a certain negro man Slave named Atticus.

But, admitting the affidavit to be as you understand it, still I hold it amply sufficient to authorize the arrest of the persons charged. Indeed, it is very seldom possible to obtain the kind of

evidence you seem to require. Crimes are generally committed in secret and are usually established by the proof of facts which necessarily lead the mind to the conclusion that the crime was committed and by a certain person. On such evidence convictions are usually obtained, and much slighter proof is sufficient to authorize an arrest.

Suppose a murder to have been committed, and an affidavit made stating that "the deponent had reason to believe and did verily believe that A. B. did the act." Will your Excellency say that on such evidence, the person charged could not be legally arrested? I hope not, for if such be the understanding of the law in the State of Maine, it would seem to me that a very low estimate is placed on the value of human life, and the preservation of order and good Government. And in regard to the crime of which Philbrook and Kelleran stand charged, we of the South, know that it is always committed secretly and generally under cover of the night. This second ground, therefore, upon which your Excellency has been pleased to place your refusal to comply with my demand, is totally untenable, and will continue so, until the whole fabric of criminal jurisprudence, as heretofore known and understood in the United States shall have been demolished and a new order of things established.

But I am at a loss to conjecture by what authority your Excellency assumes the right of judging the sufficiency of the affidavit, the nature and extent of the crime, or the guilt or innocence of the persons charged. These are the province of a court and jury of the County of Chatham, in the State of Georgia. The Act of Congress, 2d Volume Laws United States, page 165, declares, "that whenever the Executive authority of any State in the Union &c. shall demand any person as a fugitive from justice, of the Executive authority of any such State or Territory to which such person shall have fled, and shall moreover *produce the copy of an indictment found or an affidavit* made before a Magistrate of any State or Territory as aforesaid, *charging the person so demanded, with having committed treason, felony, or* OTHER CRIME, certified as authentic by the Governor or Chief Magistrate of the State or Territory from which the person so charged, fled, it shall be the *duty* of the Executive authority of the State or Territory to which such person shall have fled, to cause him or her to be arrested &c. &c." The only question then, which your excellency is competent, under this statute, to decide is this—has the Governor of Georgia transmitted the copy of an affidavit charging Daniel Philbrook and Edward Kelleran with "*treason, felony or other crime*?" That he has, your Excellency admits—but you contend that as "felony is a generic term embracing many descriptions of crime," the deponent should have stated "the act committed," from which you could have drawn a conclusion more

satisfactorily to yourself than the deponent's opinion that such an act (whatever it might be,) constituted a felony. I forbear to answer this portion of your letter in the spirit my feelings would dictate. But really Sir, I cannot avoid expressing my utter astonishment at the assumption of powers like these, and I venture to say that in the whole course of our history under the Constitution and the law I have quoted, no such pretension has been heretofore set up. Is the Governor of Maine better qualified to determine what constitutes felony *in Georgia*, than the Governor and the judicial authorities of Georgia ? And have not the latter by receiving the affidavit, issuing the warrant, and making the demand of your Excellency, declared that the crime charged is a felony ? But suppose the act not to be a felony, the demand is equally legal, and you are equally bound to comply ; because the Constitution and the Act of Congress say, treason, felony *or other crime*, and the fact that a demand has been made is evidence that a *crime* of some sort has been committted against the laws of Georgia.

But if your Excellency shall still be of opinion that it is your right to judge whether the act complained of be a felony, that opinion must, of course, be formed on the laws of Georgia, and therefore, I respectfully refer you to the following sections of the Penal Code of this State, by which you will see that all crimes inducing penitentiary punishment, come under the definition of the term felony ; and that the stealing of a slave subjects the offender to such punishment.

The 13th Section of the first division of the Penal Code of this State, is in these words :—Section 13th. " The term *felony* when used in this act, shall be construed to mean an offence for which the offender, on conviction, shall be liable by law to be punished with death or imprisonment in the Penitentiary, and not otherwise." And the 20th Section of the 6th division, is as follows :—Section 20th. " The stealing of a slave is simple larceny, and shall be punished by imprisonment and hard labor in the Penitentiary for any time not less than four years, nor longer than ten years."

Having shown, as I think, that your Excellency has misconceived the whole matter, and denied to Georgia a right guaranteed to her by the Constitution and the law, I proceed to view the subject as a political and international question.

The Constitution of the United States was the result of a compromise between States, having different, and, in some respects, antagonist interests and views. Subjects constituting property in one State, ceased to be of that character, when removed to other sections of the confederacy—and acts which constituted crimes in one State, were not considered criminal in others. Under this state of things, no union, under a general Government, could be

formed, until all the States agreed that the laws of each should be respected, and that persons charged with offences against the laws of one State escaping into another, should be delivered to the authorities of the offended State, without inquiring into the justice or propriety of the laws said to be violated. And in pursuance of this compromise, the following clause was inserted in the Constitution. "A person charged in any State with treason, felony, or *other crime*, who shall flee from justice and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime." This is a part of the organic law of the Union, and is equally obligatory on every part. But what sanction has it? Can the Chief Magistrate of a State who thinks proper to refuse obedience to it, be forced to a compliance, or be punished for contumacy? No, and why not?—Because he is the Executive officer of the State, and acts in his official capacity as the Representative of her reserved sovereignty. The act not an individual, but an official one. Is there then no remedy for the injured State? None, except such as remains to independent States, when treaty stipulations are violated—the *ultima ratio*—War—and this would produce a disrupture of the Union and of our happy form of Government. Will the State of Maine, under such circumstances and in violation of her duty to a sister State, persist in refusing to obey the Constitution and the law of the United States? I hope not, and am persuaded that on a review of this subject, your Excellency will become satisfied that Georgia has been denied a Constitutional right, without the enactment of which she would never have become a member of the Union, and without the enforcement of which she cannot maintain her just rights and liberties.

I have the honor to be,
your Excellency's
obedient servant,
WILLIAM SCHLEY.

His Excellency Robert P. Dunlap,
Governor of Maine, Augusta, Maine.

No. 5.

Executive Department,
Georgia, Milledgeville, 2d May, 1838.

To His Excellency, GOV. KENT.

Sir:—Your predecessor, Governor Dunlap, declined enforcing the demand which was made upon him for the arrest and delivery of Philbrook and Kelleran to the agent of this State, for the

want in his opinion of the requisite formalities in the proofs submitted to him, charging these persons with having violated the laws of Georgia. Governor Dunlap determined that the affidavit upon which the demand was made, was not sufficiently positive, in charging the criminal acts alleged against them, to have been committed by these fugitives from justice, nor certain in the description of the crime. These objections have been removed. The present demand is made upon the copy of a true bill of indictment, authenticated in due form, which has been found by the Grand Jury of the Superior Court of Chatham County, in this State, charging Philbrook and Kelleran with the commission of the crime of simple larceny.

The present demand has been made because the rights of property, the peace, prosperity and enjoyment of individuals, and our whole community require that there should be no uncertainty, whether this State can, through the assistance of the authorities of the State, to which such criminals may escape, punish the citizens of other States who may violate the rights of property in Slaves within its jurisdiction, by the commission of such acts as, by the laws of the State, are made crimes. As long as the relations between the States, created by the constitution, continue to exist, it would seem to be wholly unnecessary to discuss the force of the obligations upon each State, to perform the duties arising from the Union. Philbrook and Kelleran, whilst they were within the limits of Georgia, committed acts, defined by its Legislative authority to be crimes. They avoided punishment by taking refuge within the limits of the State of Maine. A demand is now made by the Executive Authority of Georgia, upon the Governor of Maine, for the arrest and delivery of these persons to the agent of Georgia, in the form, and upon the evidence required by the Laws of the United States, and in conformity with the principles of the Constitution. Upon these facts the Authorities of the State of Maine must determine, whether Georgia shall have their assistance in exercising the power secured to her by the Constitution and Laws of the United States in protecting her own institutions. That the result may be such as to to strengthen the ties of the Union, and give security and quiet to the citizens of this State in the enjoyment of their rights, is the ardent desire of

Your Excellency's ob't servant,

GEORGE R. GILMER.

No. 6.

EXECUTIVE DEPARTMENT OF GEORGIA,
Milledgeville, 27th April, 1838.

To His Excellency, the Governor of Maine.

SIR:—I herewith transmit to your Excellency a copy of a true

bill of indictment and other proceedings had thereon, from the Superior Court of the County of Chatham in this State, charging Daniel Philbrook and Edward Kelleran with the offence of simple larceny, which copy I have caused to be carefully compared with the original and certified accordingly. I have also, in pursuance of the act of Congress passed the 12th February 1793, "respecting fugitives from justice," appointed an agent on the part of this State, to receive and convey the said Daniel Philbrook and Edward Kelleran, to the said County of Chatham, to be tried for the offence with which they stand charged.

Your Excellency will therefore be pleased to consider this my demand under said statute for the said Philbrook and Killeran and to order their arrest if to be found in the State over which you preside, and cause them to be delivered to George G. Millen Esquire, the authorized agent of this State for the above purpose.

Very respectfully, Yours &c.,

GEORGE R. GILMER.

No. 7.

GEORGIA.

By George R. Gilmer, Governor of said State.

To all to whom these Presents shall come.

Whereas, under the provisions of the Act of Congress, passed the 12th February, 1793, &c. "respecting fugitives from justice," I have demanded of the Executive authority of the State of Maine, the arrest and delivery to an agent of this State, Daniel Philbrook and Edward Kelleran, fugitives of this State, charged by a true bill of indictment from the Superior Court of the County of Chatham, with the offence of Simple Larceny.

Now know ye, that I have constituted and appointed, and do by virtue of these presents, constitute and appoint George G. Millen, Esq., agent on the part of this State to receive and convey the said Daniel Philbrook and Edward Kelleran, fugitives aforesaid, to the County of Chatham, in this State, to be tried for the offence with which they stand charged. And for executing the trust herein confided to him, this shall be his sufficient authority.

Given under my hand and seal of the Executive Department, at the Capitol in Milledgeville, this 27th of April, A. D. 1838, and independence U. S. A. the sixty-second.

GEORGE R. GILMER.

By the Governor.

DAV. WILL. LEWIS,
Secretary Ex. Dep't of Georgia.

No. 8.

GEORGIA, }
Chatham County, }

The Grand Jurors sworn, chosen and selected for the County of Chatham to wit: J. P. Henry, foreman, W. Bee, George Shick, Jno. S. Law, Amos Scudder, C. Stephens, H. Haupt, S. B. Parkman, W. Morel, R. M. Goodwin, S. Philbrick, Jno. F. Posey, Jno. Lewis, Jno. Haupt, Jr., Edward Bourquin, W. C. Damill, J. W. Morrell, Solomon Sheftall, A. J. C. Shaw, in the name and behalf of the citizens of Georgia, charge and accuse Daniel Philbrook and Edward Kelleran of the County and State aforesaid with the offence of Simple Larceny. For that the said Daniel Philbrook and Edward Kelleran in the County and State aforesaid on the eighth day of May in the year of our Lord, one thousand eight hundred and thirty seven, a certain negro man slave named Atticus, of the value of six hundred dollars, the property of James Sagurs and Henry Sagurs of the County and State aforesaid, then and there being found wrongfully, fraudulently and feloniously did steal, take and carry away, contrary to the laws of said state, the good order, peace and dignity thereof.

2nd Count.

And the Jurors aforesaid, in the name and behalf the citizens of Georgia, further charge and accuse the said Daniel Philbrook and Edward Kelleran with having committed the offence of simple larceny. For that the said Daniel Philbrook and Edward Kelleran, in the County and State aforesaid, on the eighth day of May in the year of Lord one thousand eight hundred and thirty-seven by enticement and by other means feloniously wrongfully and fraudulently did induce a certain negro man Slave named Atticus of the value of six hundred dollars the property of James Sagurs and Henry Sagurs of the County and State aforesaid then and there being to run away from his owners the said James Sagurs and Henry Sagurs with intention to sell the said negro man slave named Atticus and otherwise to appropriate the said negro man slave named Atticus to their (Daniel Philbrook and Edward Kelleran) own use and to the use of other persons and thereby to deprive the said James Sagurs and Henry Sagurs the owners of the said negro man slave named Atticus of the use and services of the said negro man slave named Atticus contrary to the laws of said State the good order peace and dignity thereof.

3d Count.

And the Jurors aforesaid in the name and behalf of the Citizens of Georgia further charge and accuse the said Daniel Philbrook and Edward Kelleran with having committed the offence of

removing and carrying and causing to be removed and carried away out of this State and a County thereof a slave being the property of other persons without the consent of the owners or other persons having authority to give such consent and without any intention and design on the part of them the said Daniel Philbrook and Edward Kelleran to sell and otherwise appropriate the said slave to their own use, or to deprive the owners of their property in said slave. For that the said Daniel Philbrook and Edward Kelleran in the County and State aforesaid on the eighth day of May in the year of our Lord one thousand eight hundred and thirty seven, with force and arms a certain negro man slave named Atticus of the value of six hundred dollars the property of James Sagurs and Henry Sagurs of the County and State aforesaid then and there being from the County of Chatham and State of Georgia aforesaid did remove and carry and cause to be removed and carried away out of the State of Georgia and County aforesaid without the consent of the said James Sagurs and Henry Sagurs owners of the said negro man slave named Atticus and without the consent of any other person having authority to give such consent and without any intention and design on the part of the said Daniel Philbrook and Edward Kelleran to sell and otherwise appropriate the said negro man slave named Atticus to their own use or to deprive the said James Sagurs and Henry Sagurs the owners of the said negro man slave named Atticus of their property in said negro man slave named Atticus contrary to the Laws of said State the good order peace and dignity thereof.

4th Count.

And the Jurors aforesaid in the name and behalf of the Citizens of Georgia further charge and accuse the said Daniel Philbrook and Edward Kelleran with having committed the offence of concealing, harboring and hiding and causing to be concealed, harbored and hidden a slave to the injury of the owners thereof. For that the said Daniel Philbrook and Edward Kelleran in the County and State aforesaid on the eighth day of May in the year of our Lord one thousand eight hundred and thirty seven a certain negro man slave named Atticus of the value of six hundred dollars the property of James Sagurs and Henry Sagurs of the County and State aforesaid then and there being with force and arms did conceal harbor and hide and caused to be concealed harbored and hidden to the injury of the said James Sagurs and Henry Sagurs the owners of the said negro man slave named Atticus contrary to the Laws of said State the good order peace and dignity thereof.

JOHN E. WARD, Solicitor General.

CLERK'S OFFICE.

GEORGIA, Chatham County. } *Superior Court.*

I, *Robert W. Pooler*, Clerk of the Superior Court of Chatham County, in the State of Georgia, do hereby certify, that the foregoing two and one half pages, is, and contains a true copy of the Indictment, in the case of "The State vs. Daniel Philbrook and Edward Kelleran charged with the offence of simple larceny, as the same appears from the Original of file in said Office, and I further certify that the endorsement hereon, of the finding of the Grand Jury, to wit: "True Bill upon the first count, J. P. Henry foreman, February 7, 1838," and of the names of the witnesses, is a true copy of the original, taken from the original Indictment of file in said Office.

In testimony whereof, I have hereto set my hand, and affixed the seal of said Superior Court, this fifteenth February, A. D. eighteen hundred and thirty-eight.

[SEAL.]

ROBERT W. POOLER,
Clerk S. C. C. C.

Chatham Superior Court, January Term, 1838.

The State
vs.
Daniel Philbrook
and
Edward Kelleran. } *Simple Larceny.*

Founded on the presentment of a Grand Jury.

True Bill upon the first Count.

J. P. HENRY, Foreman.

February 7, 1838.

JOHN E. WARD, Solicitor General.

Witnesses,
JAMES SAGURS,
HENRY SAGURS,
JOHN STEVENSON,
JOHN MACON.

No. 9.

UNITED STATES OF AMERICA.

STATE OF GEORGIA.

[SEAL]

By his Excellency, GEORGE R. GILMER, Governor and Commander-in-Chief of the Army and Navy of this State, and of the Militia thereof.

To all to whom these Presents shall come :

KNOW YE, That Robert W. Pooler, whose certificate and attestation is given and made to the within document, was, at the time of making the same, holding and exercising the office of Clerk of the Superior Court of Chatham County, in said State of Georgia, and that his certificate is in due form.

Therefore, all due faith, credit and authority, are, and ought to be, had and given to his attestation as such.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of this State to be put and affixed.

Done at the State House, in Milledgeville, this second day of May, in the year of our Lord eighteen hundred and thirty-eight, and of the Independence of the United States of America, the sixty-second.

By the Governor :

W. A. TENNILLE, Sec'y of State.

Certified to as signed, this second of May, 1838.
DAV. WILL. LEWIS, *Sec'y Ex. Dep't.*

Entered : JOHN G. PARK, *Comp'r Gen.*
GEORGE R. GILMER.

No. 10.

STATE OF MAINE.

EXECUTIVE DEPARTMENT,
Augusta, June 25, 1838.

To His Excellency GEORGE R. GILMER,
Governor of Georgia:

SIR:—I have the honor to acknowledge the receipt of the communication of your Excellency inclosing a demand for the arrest and delivery to the Agent of the State of Georgia of the bodies of Daniel Philbrook and Edward Kelleran, to be transported to the County of Chatham, in said State, as fugitives from the justice of Georgia.

A copy of the bill of indictment, found by the Grand Jurors of said county, against said Philbrook and Kelleran, charging them with the crime of simple larceny in stealing a man, alleged to be a slave, within the body of said county, duly certified, accompanies the requisition.

This demand is made as a matter of right, under the provision of the Constitution of the United States in these words: "A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

I readily admit that whenever a case is made out, within the meaning of this provision of the Constitution, it is the right of one Executive to demand, and the duty of the other Executive to comply, without hesitation or delay. The language is imperative, he "shall" be delivered up.

The question of the guilt or innocence of the accused is not a matter of inquiry, except as it may bear upon the preliminary questions involved in the ascertainment of the fact, whether the particular case comes within the provisions of this clause of the Constitution.

Wherever the Constitution of the United States has imposed duties, in express terms, upon a State or its Executive, the absolute sovereignty of the State is qualified and impaired, and the action between States is rather the fulfilment of a compact, than the intercourse between independent sovereignties. I most readily and cheerfully give my assent to the position, that the Constitution of the United States is the supreme law of the land, and entitled to perfect respect and obedience, and I trust I shall

never be instrumental, in any degree, in weakening its power or disregarding its provisions.

The question, as I conceive, which is open for examination by the Executive upon such a demand, as is now made by your Excellency, is whether the case presented comes within the language and intention of the Constitution.

If he is satisfied that it does, he is bound to comply, whatever his own views of the crime charged, or of the expediency of pursuing the fugitives, may be.

It is apparent that not every case, where a crime is charged and the individual accused is found within another State, comes within the scope of this provision.

Whenever a citizen of his State is *demanded* as a fugitive from justice, to be delivered up to be transported to a foreign tribunal, to be tried before unknown judges, away from his friends and his home, for a crime, the punishment of which is extremely severe, and when this demand is urged as a right, and not asked as a favor, it surely cannot be deemed improper for the Executive upon whom the demand is made, to require evidence of every constitutional condition, before yielding up a citizen of the State over which he presides.

The Constitution of the United States requires the delivery, under this provision, whenever it is shown that the person has been accused or "charged with a crime in another State, that he has fled from justice, and that he is found in this State."

The copy of the indictment furnished me is evidence of the first point, but I have seen no evidence or proof that these men are or have been fugitives from justice.

It is, perhaps, a matter of doubt, whether the accusation must not precede the flight referred to.

The language of the Constitution seems to contemplate a flight, after accusation. "A person charged who *shall* flee," and I have little doubt that the framers of the Constitution had chiefly in view the case of a flight after accusation, and before arrest or trial, to prevent one State from becoming a city of refuge for the indicted felons or escaped prisoners of another.

But I am not disposed to dwell upon this view, but to examine the clause briefly in a more extended sense.

Has the Executive of this State a right to ask for satisfactory evidence to warrant the presumption that the accused are fugitives from justice, as well as evidence that they are charged with a crime, before yielding to the demand?

The evidence on the latter point, it is conceded, is properly

required, but the Constitution as clearly requires that the person should be a *fugitive*, as that he should be charged with a crime.

The framers of the Constitution evidently regarded this particular as important, or it would not have been inserted in that instrument, which is never redundant in language or ideas.

If it had been intended to give no discretion to the Executive, upon whom a demand is made, but to make him simply a subordinate officer to execute the request or demand of another Governor, the provision doubtless would have been, that whenever any person should be charged or accused in one State of any crime, and should be found in another, he should be delivered up upon request. But the Constitution has superadded another condition, viz: that the accused should have fled from justice.

I do not suppose that a direct, immediate and rapid flight is alone intended, or a capture upon fresh pursuit.

But I do suppose that the departure must be, in some degree, connected with the crime; that there must be some manifest design to avoid the process of the law, and an intention of placing himself out of the reach of the officers of justice.

If for instance a man had committed an assault and battery many years since in Maine, and had lived here for two or three years afterwards, and then removed to a neighboring State, where he had resided openly for a long time, I should not feel authorized to demand such person as a fugitive from justice, because a bill of indictment had been found against him in this State, and he was found in another State, and of course I should not feel justified in yielding to the demand for a person in such case, by the Executive of another State.

Circumstances and facts, in many cases, might distinctly indicate the intention of avoidance, by removal, and the presumption might be raised without direct evidence of such intention.

But I do most respectfully maintain that such "fleeing from justice" is a distinct and explicit, preliminary point, to be satisfactorily established, before the delivery can be demanded, as a matter of right.

The views of the Legislature of this State are clearly indicated in the language of the Statute of this State, on this subject, in these words: "That when a demand shall be made upon the Executive authority of this State by the Executive of any other State, in any case authorized by the Constitution and laws of the United States, for the delivery over of any fugitive

from justice, charged in such State with treason, felony, or other crime, and the Governor shall be satisfied, on investigation of the grounds of such demand, and that the same is made conformable to law, and ought to be complied with, he shall issue his warrant under the seal of the State, authorizing the agent, who may make such demands, either forthwith, or at such time as shall be designated in the warrant, to take and transport such person to the line of this State at the expense of such agent, and shall also, by such warrant, require the civil officers within this State to afford all needful assistance in the execution thereof."

The opinion of the Judges of our Supreme Judicial Court, given to my predecessor, upon a case presented, which arose prior to the question in relation to Philbrook and Kelleran, a copy of which I have the honor to enclose, is brief but explicit upon this point.

Upon the face of the papers forwarded to me by your Excellency, there is nothing which in my view establishes the position, that these men are fugitives from the justice of Georgia, and nothing which invalidates the allegation made by them that they are not such fugitives.

If the facts are as alleged by them, and as I have understood their representation to be, viz: that they are citizens of Maine; that they visited Georgia in the usual course of their business, as mariners; one as Captain, and the other as Mate of a vessel from Maine; that the vessel was loaded in the usual manner and time, and cleared and sailed in the common form, and made her homeward voyage in the accustomed track; and the aforesaid Captain and Mate returned to their homes, where they remained openly transacting their business for several months, and have so remained to this time; that they did not know that the negro man was on board their vessel, until the lapse of several days after sailing, when he was discovered concealed in the hold; I cannot regard such facts as evidence that they did "flee from justice." The indictment found against them in Georgia, it is true, charges them with a crime, but has no bearing, as I conceive, upon the question now under consideration. It was no part of the official duty of the Grand Jury to enquire into this part of the case, and they have found but one count in the indictment, viz: that charging a simple larceny as true, although there are divers other counts in the indictment presented to them. In view of the whole matter, therefore, I have come

to the conclusion, that the case presented by your Excellency, does not, in its present aspect, come within the terms of the fundamental law, the provision of the Constitution.

And I therefore, with the utmost respect towards Georgia and her Executive, decline acceding to the request of yonr Excellency, for the delivery of Philbrook and Kelleran. I beg leave to assure you, that this opinion is not formed in reference to the nature of the property alleged to have been stolen, or to the peculiar relations existing in your State, and which, in some degree, are connected with this question. I fully recognize the Constitutional right of Georgia, to enact her own penal laws, and to make that a crime, which is unknown to our laws, as such, and to demand fugitives from her justice. I place the case upon the sole ground of the fair construction of the Constitution in this particular, irrespective of particular and peculiar circumstances, which may become connected with the discussion.

Maine assumes no right to disregard any provision of the Constitutional compact, because she may incidentally aid in enforcing laws, or sustaining institutions different from her own.

I have the honor to be,
With great respect,
Your Excellency's
most obedient servant,
EDWARD KENT.

No. 11.

To the Governor of the State of Maine:

Sir:—The undersigned, Justices of the Supreme Judicial Court, to the following question, propounded to them by the Governor on the 22nd instant, viz:

"Is it the duty of the Executive of this State, to cause to be delivered over to the Agent of another State, at the request of the Executive thereof, a citizen of this State, charged (by Indictment in such other State) with fraud upon one or more of her citizens, in the sale of wild lands, or in contracts for the sale of such lands, lying within the bounds of this State, and thereby obtaining the money and notes of said citizens, under false pretences and representations in regard to the quality and value of said lands?" would respectfully answer, that in their opinion it is the duty of the Executive of this State, to cause

to be delivered over to the Agent of another State, at the request of the Executive thereof, a citizen of this State, charged in another State by indictment with the fraud before set forth, which, being indicted in such State, may be presumed to be there regarded as a crime, if the Executive of this State is satisfied, that such citizen has fled from justice from the State making the demand, *and not otherwise.*

Mr Justice Shepley being now engaged in official duty at Machias, the undersigned have not had it in their power to communicate with him, without postponing their answer to a later period than might be deemed convenient.

Castine, June 26, 1837.

NATHAN WESTON,
NICHOLAS EMERY.

No. 12.

EXECUTIVE DEPARTMENT, Ga.,
Milledgeville, 23d August, 1838.

To His Excellency Edward Kent.

SIR:—I have had the honor of receiving your communication notifying the Executive of Georgia, that the renewed demand which has been lately made of the Executive of Maine for the arrest and delivery to the Agent of this State, of Philbrook and Kelleran, has, like the former, been refused.

I cannot perceive in the reasons assigned by your Excellency, any sufficient justification for this determined denial to Georgia, of a right secured by each State to the others, by contract clearly expressed in the Constitution, and absolutely necessary to the well being of all.

The facts of this case are, that Philbrook and Kelleran, being in Savannah engaged in business as Mariners, one, as the Captain, and the other the Mate of a vessel, on leaving that port on the 4th of May 1837—secretly carried off in their vessel a negro slave, the property of two citizens of that place;—that they returned directly to the State of Maine, where they have since remained; that they were on the 17th June thereafter demanded by the Executive of Georgia as fugitives from the justice of the State, of the Executive of Maine, upon the copy of a duly authenticated affidavit, charging them with feloniously taking and carrying away said slave from Georgia, and having fled to the State of Maine;—that this demand was refused;—that afterwards they were indicted for the same crime

in the Superior Court of Chatham County (in which County the city of Savannah is) and found guilty, as charged in the affidavit upon which the first demand was made;—that the demand upon the Executive of Maine was renewed upon a properly authenticated copy of that bill of indictment, and rejected by your Excellency.

The question is whether you and your predecessor have acted in accordance with the Constitution.

The words of the Constitution, applicable to this subject are, that "a person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

The States in adopting this clause of the Constitution, evidently intended to provide the means by which all offenders against the laws of the States should be brought to trial.

No power has been delegated to the General Government to punish crimes against the laws of the States. Neither is one State authorized to execute warrants of arrest within the jurisdiction of another. By a principle of law common to all the States, and expressly recognized by the Constitution of the United States, a person charged with the commission of a crime, can only be tried in the State and district where the crime is committed.

The only protection afforded to Society throughout the United States against the operations of the lawless, is to be found therefore, in the power of each State, to arrest and bring to trial offenders remaining within its jurisdiction, and to demand from the Governors of the several States the arrest and delivery up of all who may be fugitives from its justice.

The equality of privileges and immunities secured by the Constitution to the citizens of each State in the several States, —the identity of the language, habits, pursuits and feelings of the people throughout the Union,—and the similarity of the form of Government, and the public institutions of the several States, enable the offenders against the laws to pass from one State into another, without sacrifice or difficulty. Unless, therefore, the Governors of the several States deliver up upon demand all within their jurisdiction, who are charged with the commission of crimes in other States with the same certainty that criminals are arrested by the officers of justice within the jurisdiction where their offences were committed,

the people of this country have no sufficient security for the protection of their rights, against the facility with which offenders can escape from the jurisdiction where alone they can be tried, and our form of Government will have failed in providing for the performance of one of its most important functions, the certain punishment of crimes.

The conduct of yourself and predecessor in preventing Philbrook and Kelleran from being brought before the Courts of Georgia, where alone they could be tried, has certainly not been in conformity with these views of the Constitution.

You maintain however, that "fleeing from justice" in the recited clause of the Constitution, is a direct, explicit, and preliminary point to be satisfactorily established, before the accused can be demanded as a matter of right. And you justify your refusal to deliver up Philbrook and Kelleran upon the allegation that this condition had not been complied with by the authorities of Georgia.

To give to the words, "flee from justice," your interpretation, would most obviously tend to thwart the purposes of the Constitution, by increasing the difficulty, if it would not render it impossible to make demands. But without this general reasoning the point made by these words was established by the express allegation, in the demand made of your predecessor and yourself by the Executive of this State, that Philbrook and Kelleran were fugitives from the justice of Georgia:— By the charge against Philbrook and Kelleran of the commission of larceny in Georgia, proven by a duly authenticated copy of an affidavit, and a true bill of indictment found; and by the acknowledgement of your predecessor, that at the time when the demand was first made, and afterwards by yourself when it was renewed, that these persons were at the time in the State of Maine.

According to the Act of Congress, passed February 12th, 1793, whenever the Executive authority of a State demands the arrest and delivery up of a person as a fugitive from its justice, and produces to the Governor of whom the demand is made, the authenticated copy of an affidavit, or true bill of indictment found charging the person so demanded with the commission of a crime within the State demanding him, and he is found within the jurisdiction of the State of which he is demanded, the law presumes, without further proof, that he has fled from justice.

But if these facts and legal presumptions had not sufficiently established the proper application of the words of the Consti-

tution "flee from justice" to the case of Philbrook and Kelleran; the positive proof furnished by the affidavit upon which the demand was first made, did so, beyond a doubt. That affidavit, after setting forth the crime charged upon Philbrook and Kelleran, states that since the commission of said felony, the said Daniel Philbrook and Edward Kelleran have fled from this State, and are, it is believed, within the limits of the State of Maine."

The arrest of fugitives from justice can never be asked of a Governor as a matter of favor, to be granted according to his discretion, as your Excellency seems to suppose. The demand must be made as a matter of right, and if accompanied by the proofs required by the law of the United States, the duty is imperative. The Executive authority of a State has no right to arrest and deliver up a citizen upon demand, unless made in the form which would compel the arrest. The constitution allows no option.

It gives no room for the exercise of the will or caprice of the Governor, or his yielding to public opinion or feelings around him.

The rule of conduct in making demands and arresting fugitives from justice, to be just, must be applicable to all the States, at all times, and to all crimes.

The difficulties which the authorities of this State have met with in bringing to trial Philbrook and Kelleran, have proceeded from the nature of the particular crime with which they are charged, and not the want of sufficient proof that they were fugitives from justice, or the failure on the part of the authorities of Georgia to perform the requirements of the constitution and laws of the United States in demanding them.

If these persons had committed a secret murder, robbery, or forgery in the transaction of their business in Savannah, or stolen bales of cotton instead of a negro slave, no one can doubt but that they would have been delivered up without the repeated demand upon the various proofs upon which their arrest has been refused.

If Philbrook and Kelleran had been charged with any other crime than stealing a slave, is it possible that the Governor of Maine would have constituted himself into a judicial tribunal, to receive the voluntary statements of the accused,—have inferred their innocence from the very facts which usually accompany guilt in such cases—their being mariners coming from a non-slave holding State into the sea ports of Georgia in the

usual course of their business, and when returning home carrying away slaves (this being the mode in which the citizens of the seaboard of this State are most frequently deprived of their property) have determined in consequence that the accused were not fugitives from justice, and have refused to deliver them up to the authorities of Georgia, where alone their guilt or innocence could be legally enquired into?

The opinion that the demand of Philbrook and Kelleran has been refused, not because the case did not conform to the requirements of the Constitution and laws of the United States, but because these persons were charged with stealing a slave, as confirmed by the Act of the Legislature of Maine to which your Excellency has referred as sanctioning your course.

The right of the States to demand from each other the delivery up of fugitives from their justice, is derived from the mutual agreement entered into in their sovereign capacity by all the States who are parties to the Constitution, and is secured by making it obligatory upon the Executive authorities of each State, to comply with such demands.

The manner in which this is to be performed has been prescribed by a law of the U. States. The Legislative Department of a State cannot therefore limit, restrain, or control the Executive Department in the exercise of this power, which is not derived from the State, but is thus imposed as a duty by the Constitution, or pass any law whatever upon the subject, except to aid or compel the Governor to execute what the Constitution and laws of the U. States enjoin upon him.

And yet, the Legislature of Maine, on the 20th of March last, after your predecessor had refused to deliver up Philbrook and Kelleran, and the Legislature of Georgia had directed the demand to be renewed, passed a law, giving authority to the Governor to satisfy himself by an investigation into the grounds of a demand, and whether it ought to be complied with, before he should arrest fugitives from the justice of other States.

The authorities of Maine cannot but be aware that if public sentiment in Maine requires the Governor to protect persons from punishment who take from the citizens of Georgia their slave property, that the authorities of Georgia must necessarily protect the rights of its citizens from the danger to which their slave property will be thus exposed from Mariners coming from Maine into her ports.

I shall not attempt to trace out the consequences to which such a state of things must lead.

Those who know how to estimate the blessings derived from the Union, need no such commentary. And those who think it doing God service to plunder us of our slave property will not regard it.

The Legislature of this State has directed me to request you to transmit to the Legislature of Maine, at its next session, the enclosed copy of resolutions adopted at its last session.

Your Excellency is requested to communicate to this Department whatever proceedings may be had, by the Legislature of Maine, upon these resolutions.

Very Respectfully,
Yours &c.
GEORGE R. GILMER.

No. 13.

STATE OF MAINE.

EXECUTIVE DEPARTMENT,
Augusta, Sept. 26, 1838.

To His Excellency, GEORGE R. GILMER,
Governor of Georgia.

SIR:—I have the honor to acknowledge the receipt of your Excellency's communication of the 23d of August last, in relation to the demand made for the delivery of Philbrook and Kelleran; and also a printed copy of a Report and Resolves of the Senate and House of Representatives of the State of Georgia, which, in compliance with your request, I shall cause to be laid before the next Legislature of this State.

With great respect,
I have the honor to be,
Your Excellency's
Obedient servant,
EDWARD KENT.

No. 14.

HOUSE OF REPRESENTATIVES.

The Joint Committee on the state of the Republic, to whom was referred so much of the Governor's Message as relates to

his correspondence with the Governor of Maine, which correspondence was occasioned by the secret and felonous abduction from the city of Savannah of a negro slave named Atticus, the property of James and Henry Sagurs, by Daniel Philbrook and Edward Kelleran, citizens of the State of Maine, and fugitives from justice; together with the accompanying documents, (to wit.) the affidavit of James Sagurs, one of the owners of said slave, the warrant of the magistrate, and the return of the officer thereon; the consequent demand of the Executive of Georgia upon the Executive of Maine, for the delivery of said fugitives to the agent of the State of Georgia, in order that they might be made amenable to the violated laws of the State, and the refusal of the Governor of Maine to comply with said demand,

REPORT:

That said Committee have fully reviewed all the circumstances attending said demand and refusal; that in the opinion of said Committee, the Governor of Maine has signally failed to show any good and sufficient cause to justify him in refusing to comply with the just and reasonable demand of the Executive of Georgia—but that, on the contrary, the reply of the Governor of Georgia to the letter of refusal of the Governor of Maine, contains arguments, unanswerable arguments, which should at once have caused that officer, if at all disposed to comply with the requisitions of the Constitution of the United States, by performing the sacred duties which it imposed upon him, or to preserve that courtesy which should ever subsist between the sister States of this Union upon any and every subject, however trifling it might be in its nature, but more particularly upon questions of such grave import as the one now under consideration, to have caused said fugitives to be arrested, and the necessary notice of such arrest given to the Governor of Georgia, so that they might be made to answer the charges preferred against them—and, if innocent, to vindicate their innocence—if guilty, to endure the just punishment of their cimes.

The refusal of Governor Dunlap, occurring at a period when the minds of the people of the South are justly excited, and their feelings most wantonly outraged by the machinations of certain fanatics of the North, who seem determined, in defiance of sound policy and the dictates of honest patriotism, and of every principle of natural and constitutional law, to keep up an

excitement in relation to a certain species of property with which no interference from any quarter whatsoever will be permitted—a property guaranteed to them by the Constitution of the United States, and without which guaranty, this Union never would have been formed, appears, in the opinion of your Committee, if not like a disposition on the part of the Governor of Maine, to foster and encourage said fanatics in their unholy crusade against Southern rights, and which, if persisted in, must inevitably lead to a speedy dissolution of the Union, at least like an inclination to wink at their proceedings by screening their miserable agents who alone carry their doctrines into practical effect, by wanton depredations upon our property, from the justice of our laws.

The reasoning of his Excellency of Maine, in his letter of refusal, to the demand of the Governor of Georgia, is, in the opinion of your Committee, entirely fallacious, and evasive of the true question at issue. The affidavit of the owner of the stolen slave, directly charges, that the fugitives did, "on or about the fourth day of May, eighteen hundred and thirty-seven, *feloniously inveigle*, *steal*, *take and carry away*, a negro slave; with having, after the commission of said felony, *fled from the State;* and that they were believed at the time to be within the limits of the State of Maine. Is it for one moment to be presumed that the Governor of the State of Maine was not aware that larceny is made, by the laws of every State in the Union, felony; unless, indeed, it may not so be by those of Maine? That State, indeed, may have, in tender mercy to thieves and incendiaries, declared it otherwise; but this your Committee does not and cannot believe. Whether however felony or not, by the laws of Maine, is it not a crime? It is so declared by the Penal Code of the State of Georgia, which fact was communicated to the Governor of Maine, by the Governor of Georgia. Has, then the Governor of Maine done that which not only common courtesy, but justice, policy, patriotism and imperative duty required him to perform? Has he complied with the stern requisitions of the Constitution of the United States, which he was sworn to support and defend? No! But he has disregarded and violated all. The Act of Congress, passed February 12th, 1793, "respecting fugitives from justice, and persons escaping from the services of their masters;"—an Act passed in furtherance of the second section of the fourth Article of the Constitution, which says, "a person charged in any State with treason, *felony* or *other crime*, who shall flee

from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime "—expressly and peremtorily declares, "that whenever the Executive authority of any State in the Union, or either of the Territories, Northwest or South of the river Ohio, shall demand any person as a *fugitive from justice*, of the Executive authority of any such State or Territory to which such person shall have fled, and shall moreover produce the copy of an indictment found, *or an affidavit made* before a magistrate of any State or Territory, as aforesaid, charging the person so demanded with having committed treason, *felony, or other crime*, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged fled, it shall be the *duty* of the Executive authority of the State or Territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the Executive authority making such demand, or to the agent of such authority, appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear"—and further provides, that "if no such agent shall appear within six months from the time of such arrest, the prisoner may be discharged," &c. Now by referring to the documents hereunto annexed, it will appear, that every requisition of the above recited Act, was strictly complied with by the Executive of Georgia. But the Governor of Maine, in his anxious desire to find an excuse for not doing his duty, says, so far as he has received any information relative to Philbrook and Kelleran, their visit to Georgia was in the course of their ordinary business as mariners; their vessel being at the South, they navigated it homeward, by the usual route, and in the usual time ; they had stated homes to which they openly returned; at those homes they took up their residence, and conducted their affairs there without concealment, and in all respects conformably to the usage of innocent and unsuspecting citizens. Whether such a course of conduct is to be a fleeing from justice, within the meaning of the Act of Congress, and whether men so conducting are to be viewed as fugitives, may present a question of some importance, which he does not deem it necessary for him to decide. Truly a most wise conclusion. But the Governor of Maine seems to claim it as a matter of right, for him to depend upon information which he received, for refusing to deliver the fugitives, information perhaps false,

against a positive oath. Surely then your Committee, speaking in behalf of the people of Georgia, if not of the entire South, may be permitted, also, to rely upon information which they have received, for reasons (independent of those already given) why they *should* have been delivered. The vessel of the fugitives left, it appears, the Port of Savannah, in the usual manner; she pursued the usual track, that of the broad Ocean, (the only one she could possibly pursue,) to reach her port of destination; she arrived in the usual time, and, as the Governor of Maine *would have us believe*, "they took up their residence" at their *usual homes*. On the other hand, your Committee is informed, upon good authority, that when the owner, who went in pursuit of the stolen slave, arrived at the port to which the fugitives fled, to wit: their *homes*, they themselves could not be found, although their vessel was lying in the port; the slave they did find *concealed in a barn*, and that when the party who arrested him were about leaving with the recovered property, they were pelted by the populace, and the owner with difficulty escaped from the fury of the mob.

But it is unnecessary to dilate further. All the facts of the case show conclusively, that the Governor of Maine, if not disposed at the time of the demand to comply with it for want of information, that he should have done so on the reception of Governor Schley's second letter. To that letter no reply, so far as your committee is informed, has ever been received. Compelled therefore from all these circumstances to believe, that the constituted authorities of Maine do not mean to comply with the laws and Constitution of the country, but in total disregard of both, to treat with contempt the just demands of Georgia, all that remains for your Committee to perform, is, to suggest the remedy. This is indeed a delicate and difficult task. We cannot close our ports against the vessels of Maine. We cannot declare a non-intercourse with her citizens. Either course would be clearly unconstitutional. To seize upon the persons of her citizens, as hostages, or to levy upon their property found in our State, by way of reprisal, would also be unconstitutional, but if not, it would be unjust, because it would be punishing the innocent for the guilty. What then ought to be done? Resort to the *ultima ratio?* This, in the language of Governor Schley, cannot be resorted to without a violation of the Federal Compact; and long, long may it be before the States of this Union shall be involved in civil conflict. But knowing that this dreadful alternative must inevitably be ultimately

resorted to as a matter of self-defence, by the people of the South, in case the unhallowed example of the Governor of Maine be followed by the authorities of the other States of the North, and willing to prove to the world, by our forbearance, our reverence for the Constitution, a forbearance which it is hoped will hereafter insure us justice, your Committee, although strongly disposed to recommend the passage of a law imposing a quarantine upon all vessels coming into our waters from the State of Maine, in consequence of viewing the doctrine of abolition as a moral and political pestilence, which if not checked will spread devastation and ruin over the land, at this time simply recommend the adoption of the following resolutions:

Be it therefore unanimously resolved by the Senate and House of Representatives of the State of Georgia in General Assembly met, That the refusal on the part of the Governor of the State of Maine, to deliver up or cause to be delivered up, upon the demand of the Governor of this State, Daniel Philbrook and Edward Kelleran, who stand charged with the commission of a crime against the laws of this State, and have fled therefrom, is not only *dangerous* to the rights of the people of Georgia, but *clearly* and *directly* in *violation* of the *plain letter* of the Constitution of the *United States*, which is in the following words, to wit: "a person charged in any State with treason, *felony*, or *other crime*, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Be it further unanimously resolved, That the State of Georgia, and each of the other members of this Confederacy, by the adoption of the Federal Constitution, became a party thereto, *no less* for the *better* protection of *her own* than the *common rights and interests of all*—and when these ends cease to be atta ned, by the *faithlessness* of any to the *constitutional engagement*, she is no longer *bound by any obligations to the common compact;* and it *then* becomes not only her *right*, but her *duty*, paramount to *all others*, to seek and provide protection for her *own people in her own way*.

And be it further unanimously resolved, That so soon as a bill of indictment shall be found true, in the Superior Court of Chatham County, against the said Daniel Philbrook and Edward Kelleran for the offence aforesaid, the Executive of Georgia be requested to make upon the Executive of Maine, a second de-

mand for the persons of the said fugitives, predicated upon said bill of indictment, and accompanied by such evidence as is contemplated by the Act of Congress in such cases made and provided.

And be it further unanimously resolved, That should the Executive of Maine refuse to comply with such second demand, the Executive of Georgia be requested to transmit a copy of these Resolutions to the Executive of each State in the Union, to be presented to their several Legislatures; and also a copy to the President of the United States, and to our Senators and Representatives in Congress, to be laid before that body. And should the Legislature of Maine, at its session next after the said Resolutions shall have been forwarded to the Executive of that State, neglect to redress the grievance herein before set forth, it shall be the duty of the Executive of Georgia to announce the same by Proclamation, and call upon the people of the several Counties, on a day in said Proclamation to be named, to elect, under like restrictions and regulations as in the election of members to the Legislature, a number of Delegates equal to the number of Senators and Representatives to which they may be entitled in the General Assembly, to meet in Convention at the seat of Government, on a day to be fixed in said Proclamation, to take into consideration the state of the Commonwealth of Georgia, and to devise the course of her future policy, and provide all necessary safeguards for the protection of the rights of her people.

In the House of Representatives, agreed to 22d December, 1837.

JOSEPH DAY,
Speaker of the House of Representatives.

Attest:

JOSEPH STURGIS, *Clerk.*

In Senate, concurred in the 25th December, 1837.

ROBERT M. ECHOLS,
President of the Senate.

Attest:

JOHN T. LAMAR, *Secretary.*

Approved 25th December, 1837.

GEORGE R. GILMER, *Governor.*